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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,354	01/30/2001	Paul J. Rank	30014200.1080/PJLM	2393
58328 7590 04/27/2010 MARSH FISCHMANN & BREYFOGLE LLP 8055 E. Tufts Avenue, Suite 450 Denver, CO 80237				
EXAMINER NGUYEN, MAIKHANH				
ART UNIT		PAPER NUMBER		
2176				
MAIL DATE		DELIVERY MODE		
04/27/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/774,354

**Applicant(s)**

RANK ET AL.

**Examiner**

MAIKHANH NGUYEN

**Art Unit**

2176

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 is/are allowed.
- 6) ☒ Claim(s) 10-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Statement(s) (PTO/SF/23)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responsive to the RCE filed 02/08/2010.

Claims 1-4 and 10-13 are currently pending in this application. Claims 1 and 10 have been amended. Claims 5-9 and 14-18 have been cancelled. Claims 1 and 10 are independent Claims.

### **Request Continuation for Examination**

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/08/2010 has been entered.

### **Claim Rejections - 35 USC § 101**

3. 35 U.S.C. 101 reads as follows:

*Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.*

Claims 10-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Regarding independent Claim 10**, the claim recites a “*computer usable medium*” storing instructions that perform various functions. In the Specification of the present application, the “*computer readable medium*” is expressly defined as including **carrier wave** (see Page 22, Lines 8-21). Thus, the recited “*computer readable medium*” is not a “process,” a “machine,” a “manufacture” or a “composition of matter,” as defined in 35 U.S.C. 101.

Accordingly, Claim 10 fails to recite statutory subject matter under 35 U.S.C. 101.

For the same reasons discussed supra with respect to independent Claim 10, dependent Claims 11-13 fail to recite statutory subject matter under 35 U.S.C. 101.

### **Indication of Allowable Subject Matter**

4. Claims 1-4 appear to be allowable over the prior art of record, subject to the results of a final search by the Examiner.

Claims 10-13 appear to be allowable over the prior art of record, subject to the 101 rejection and subject to the results of a final search by the Examiner.

### **Response to Arguments**

5. Applicants' arguments filed 02/08/2010 have been fully considered but are moot in view of the new ground(s) rejection.

### **Conclusion**

6. The prior art made of record, listed on PTO 892 provided to Applicant is considered to have relevancy to the claimed invention.

### **Contact information**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maikhanh Nguyen whose telephone number is (571) 272-4093. The examiner can normally be reached on Monday - Friday from 9:00am – 5:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached at (571) 272-4137.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MaiKhanh Nguyen/  
Examiner, Art Unit 2176

/Laurie Ries/  
Primary Examiner  
Technology Center 2100  
24 April 2010